

BOROUGH OF SOUTH PLAINFIELD
ZONING BOARD OF ADJUSTMENT MINUTES
December 17, 2019

Chairman Leonardis opened the meeting at 7:00 pm.

Please stand for the PLEDGE OF ALLEGIANCE.

This meeting was held in accordance with the Open Public Meeting Act and as such, proper notice of this meeting was published in The Observer, The Courier News and The Star Ledger providing same to the Borough Clerk.

It is the policy of the South Plainfield Zoning Board of Adjustments, not to hear any new applications after 10:00 pm and no new witnesses after 10:30 pm.

ROLL CALL:

Present:

Gino Leonardis, Chairman
James Gustafson, Vice Chairman
Ken Bonanno
Maria Campagna
Darlene Cullen
Frank Lemos
April Wasnick, 1st Alternate
Joseph Scudato, 2nd Alternate

Absent:

Cindy Eichler

Also attending, John Wiley, Esq.; Bob Bucco, PE, CME, CPWM; Stan Slachetka, PP, AICP

MINUTES: None

RESOLUTIONS:

- A. Case #42-18 – Billybordz 287, LLC
Block 528.01: Lot 46.04: M-2 Zone
5000 Hadley Road**

Chairman Leonardis called for a motion to **approve** the above listed Resolution. Mrs. Campagna made motion, seconded by Mrs. Cullen. Those in favor: Mr. Bonanno; Mrs. Campagna; Mrs. Cullen; Mr. Lemos; Mrs. Wasnick and Chairman Leonardis. Those oppose: None.

- B. Case #15-19 – Tingley Properties, LLC
Block 3: Lot 21: R 10 Zone
811 Trinity Street**

Chairman Leonardis called for a motion to **approve** the above listed Resolution. Vice Chairman Gustafson made motion, seconded by Mr. Lemos. Those in favor: Mr. Bonanno; Mrs. Campagna; Mr. Lemos; Mr. Scudato; Vice Chairman Gustafson and Chairman Leonardis. Those oppose: None.

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HEARING: (1 Commercial)

**A. Case #02-19 – Joseph Penyak, Jr.
Block 332: Lot 13: M-3 Zone
309 Pulaski Street**

The applicant is requesting a use variance for a contractor's storage yard.

Robert Levinson, Esq - Levinson Law, LLC - 2035 Lincoln Highway, Suite 2250, Edison, New Jersey - Attorney for the Applicant addressed the Board Members. Use variance for property located at 309 Pulaski Street, Block 332 Lot 13 in the M-3 zone. Present is Engineer, Mr. Dec and owner of the property, Mr. Penyak.

Edward S. Dec - Guarriello & Dec Associates, 131 North Michigan Avenue, Kenilworth, New Jersey - is sworn in and accepted as a Professional Engineer. Mr. Dec addressed the Board using the plans before the Board members:

- Property located at 309 Pulaski Street.
- Adjoining properties are M-3 zone. Residential units adjoining property.
- Ten thousand (10,000) square feet - 100' X 100' square lot.
 - Confirmed chart on plans incorrect. Lists two hundred feet width (200') - actually one hundred feet (100') wide.
- Minimum required for zone - forty thousand (40,000) square feet.
- Minimum required for zone - lot width is two hundred feet (200').
- Existing non-conforming lot.
- No buildings on site. No setback, building height or accessory use requirements apply.
- Ninety-three percent (93%) lot coverage - paving and stone.
- Six foot (6') chain link fence with slats - entire property.
- Gate access off of Pulaski Street.
- Received review letter from Board Engineer. Will discuss with Applicant which improvements would meet the requirements.
- Proposing storage of vehicles for Applicants business and other businesses vehicles.
 - Commercial vehicles.
 - No parking designation.
- Entering and exiting site in the morning and evening.
- No lighting, no water, no washing of vehicles.

Mrs. Cullen asked if the Applicant will address the number of vehicles. Mr. Dec stated yes.

Joseph Penyak - 86 Rock Road, West, Green Brook, New Jersey - Applicant and owner. Is sworn in.

Mrs. Cullen questioned Mr. Penyak:

- How many vehicles will be stored that belong to him and how many to other business own? *Eight (8) or nine (9)... few trailers and trucks.*
- Do these vehicles belong to Mr. Penyak? *Some of them are his, some belong to a landscaper.*
- Someone in mind to use the property? *Yes.*
- Will be renting space? *'Yes, a part of it'.*
- Will the landscaper bring back grass etc.? *Nothing.*
- Is the property being used currently? *Yes, it has been used for the last ten (10) years. Sometimes empty, sometimes not.*
- Are there plows? Is that the correct property? *Next to the garbage place.*
- What are the hours? *Approximately 7 am to 5 pm. Most of time no one is there. Only store vehicles.*

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Mr. Bucco asked if there are any construction materials being stored. Mr. Penyak stated no... just vehicles.

Mr. Scudato asked if the property will be heated. Per Mr. Penyak, no. No water or power.

Vice Chairman Gustafson asked no building. Mr. Penyak replied a vacant piece of property.

It is determined that there is no building currently on the property and is not proposing one.

Mrs. Wasnick asked if there will be any security cameras on the property. Mr. Penyak stated there is no power at the property.

Vice Chairman Gustafson asked if there are no meters on the property. Mr. Penyak stated correct.

Mrs. Wasnick asked if Mr. Penyak was concerned about security. Mr. Penyak stated not at this time. Nothing but trucks.

Vice Chairman Gustafson stated that currently, Mr. Penyak's trucks and contracting trucks are stored on property. Per Mr. Penyak, currently a landscaper. Vice Chairman Gustafson reiterated there is no power currently. Asked if the tenant or himself are considering power. Mr. Penyak stated not at this time.

Mrs. Campagna reiterated that it is Mr. Penyak's trucks and a landscaper truck. When drove by, the vehicles were parked all over the place. Asked if Mr. Penyak has any intent to have designated parking. It looked like a junk yard with all items all over the place. Mr. Penyak asked if she was looking at the correct property.

Vice Chairman Gustafson stated that the tax map is confusing. There are two (2) houses and a building. Then the trash company. The property is the brown fence. Mrs. Cullen stated next to the trash company. It is determined Mrs. Campagna is discussing the correct property.

Mr. Bucco asked Mr. Dec if he had reviewed his letter and if there are any concerns. Mr. Dec stated he has concerns with the buffers... starting on page 2 on May 2, 2019 letter. The residential uses are in the M-3 zone and the buffering is referring to residential buffering... thirty-five foot (35') buffer is one third (1/3) the depth of the lot. Believes it is not necessary. The intent can be accomplished by the fence and maybe one (1) row of arborvitaes. Mr. Bucco stated it is a residential area and is in need of buffering. If no buildings and only vehicles, a fence with slats and a row of ten foot (10') arborvitaes may be acceptable. Mr. Bucco confirmed with Mr. Penyak that there will not be any vehicles over ten feet (10'). Mr. Bucco has no objections of doing so... but up to the Board. Mr. Penyak stated that there is one (1) home. Mr. Bucco stated there are three (3) residential homes.

Mr. Slachetka stated that in his review letter, there is a requirement of a six foot (6') strip of planting. Mr. Slachetka stated what is being suggested with the fence and row of arborvitaes would be the minimum. Chairman Leonardis asked which sides. Mr. Bucco stated definitely the rear... both sides are commercial. Mr. Bucco stated there are three (3) residential units in the rear. The side yards are commercial. A fence with slats would be the minimum.

Vice Chairman Gustafson asked if there can be testimony as to what is behind the lot. Mr. Dec stated that Mr. Penyak owns lots 3 and 4 shown on the tax map. Chairman Leonardis stated the street behind is Pitt Street. There is a large green house behind the lot. Per Mr. Dec, lot 5. Per Mr. Penyak, the house closer to the corner is owned by him. On the other side of the green house is a steel fabricator.

Mr. Slachetka stated in addition to the rear of the lot where the residential properties adjoin, believes there should be some landscaping across the front of the property.

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Vice Chairman Gustafson asked if the trees in the rear of the property belong to him or neighbors. Per Mr. Penyak, it is his neighbors. Vice Chairman Gustafson confirmed with Mr. Penyak that there are no plantings on his property and that the fence in the back is six foot (6') high with slats. Asked if the slats on all sides match. Per Mr. Penyak, yes. Vice Chairman Gustafson also confirmed with Mr. Penyak that the trees in the rear of the property belong to the neighbors. Vice Chairman Gustafson asked Mr. Penyak if the limbs of the trees over six feet (6') high. Mr. Penyak stated he could not answer that question... does not know. Vice Chairman Gustafson asked Mr. Penyak if he would oppose to having a buffer along the back fence. Mr. Penyak stated 'if that's what I have to do'.

Mr. Bucco asked if Mr. Penyak would agree to plantings along the fence line in the rear. Mr. Dec questioned as a buffer.

Mr. Bucco agreed with Mr. Slachetka regarding landscaping in the front.

Vice Chairman Gustafson asked Mr. Slachetka if the landscaping in the front would be in front of the fence. Mr. Slachetka stated yes... and if the fence is slotted, the landscaping does need to be a full screen. A landscaping enhancement. Chairman Leonardis added that it must be deer resistant. Mr. Penyak agreed.

Mr. Dec stated went through Mr. Bucco's review letter. Did the turning radius for different type of trucks. The way it has been operating and will continue to operate is that they are parked in a way to move out. There may be some backing up and K-turns. Mr. Bucco stated that there will be no regulated parking... 'pull in and away its goes'. Per Mr. Dec, yes. No washing of equipment or vehicles. The Applicant is unaware of any ground water contamination on site. Mr. Bucco stated it needs to be further looked into. According to DEP and GEO site, there is indication of ground water contamination. Mr. Levinson stated there was notification that there was contamination on the Crown Bullion and Refinery. There is no assessment that there is contamination on this property. Mr. Levinson asked Mr. Penyak if they create dust. Mr. Penyak stated no. Mr. Bucco asked to see the documentation. The documentation is from the Environmental Commission. Mr. Bucco stated that they did not have any objection to waiving the Environmental Impact Statement. There are no utilities, no digging and no disturbance of ground water. Vice Chairman Gustafson confirmed with Mr. Bucco that the GEO website stated that there is potential of contamination in the ground water on the site. Mr. Bucco stated checks this with every application. Vice Chairman Gustafson asked if it is referring to standing water or ground water. Per Mr. Bucco, ground water. Mrs. Cullen stated that on Pitt Street, there is ground water contamination. Mr. Slachetka asked Mr. Bucco if the contamination from the site or migration. Mr. Bucco stated migration... there are no wells on the site. Mr. Levinson stated that the concern is that the migration is from Crown Bullion. Vice Chairman Gustafson asked Mr. Bucco how does the migration effect the Board. Mr. Bucco stated that the site that is under observation must provide documents to DEP until they get a letter of no further action. Again, no utility, no digging, no living space etc. being proposed. Mr. Levinson stated that they never received a request from DEP to come onto the site. Chairman Leonardis asked if the proposed site being monitored currently. Mr. Penyak stated no. Mr. Bucco stated he is acceptable to waiving the Environmental Impact Statement.

Mr. Bucco asked if there will be any trash on site. Per Mr. Penyak, no. Mr. Bucco asked Mr. Dec if he can comply with Item E. Mr. Dec stated yes. Mr. Bucco asked for a boundary survey. Mr. Dec stated he will provide any additional information that is being requested.

Mr. Bucco stated that the Applicant has agreed to comply with his letter.

Mr. Bonanno asked is there is a street light in the vicinity. Mr. Penyak stated yes. Mr. Dec stated there is a pole with a light.

Chairman Leonardis asked for an assurance that the site will be organized... not a junk yard. Mr. Wiley asked for the number of pieces of equipment to be parked on site. Mr. Levinson stated eight (8) to nine (9). Mr. Lemos asked what type of equipment. Mr. Penyak responded... pickup trucks and a box trailer.

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Vice Chairman Gustafson asked any back hoes, dump trucks etc. Mr. Bucco asked anything larger than a box truck. Mr. Penyak stated no to both. Chairman Leonardis asked if Mr. Penyak is agreeable to having one (1) landscaper and Mr. Penyak's trucks only on the site. Mr. Penyak stated yes. Chairman Leonardis asked if Mr. Penyak is agreeable to a time frame... ten (10) years. Mr. Penyak stated would like to develop the property one day... 'this is not forever'. Mrs. Cullen asked Mr. Penyak why he is before the Board since been using the property for ten (10) years. Was there a problem? Mr. Penyak stated yes.

Mr. Lemos asked when Mr. Penyak picks up a vehicle, where does he park. Per Mr. Penyak, inside the lot. Mr. Lemos asked how many employees. Mr. Penyak stated two (2) or three (3). Has another building that he uses for his business and keeps all his equipment at. Mrs. Cullen asked if this site is 'overflow'. Mr. Penyak stated yes.

Mr. Slachetka asked if someone is picking up a truck, where will their personal vehicle be parked. Mr. Penyak stated inside the lot. Mr. Slachetka stated in addition to the trucks and trailers, there will have additional vehicles. How many additional vehicles. Mr. Penyak responded, one (1) or two (2) inside the lot. It will not be every day.

Vice Chairman Gustafson asked for a clarification on how the site would operate. Mr. Penyak stated currently there is a slotted fence. Hard to see inside. Gate in the left front of the property which remains closed. Inside the lot will be pick-up trucks, rack truck and landscape trailer. Not used every day. Vice Chairman Gustafson asked if there are any 'boxes' being stored. Per Mr. Penyak, no. Mr. Levinson stated that all vehicles parked will have current registration.

Chairman Leonardis stated he believes there is a temporary hut like structure on site. Mr. Penyak stated that has been removed. Chairman Leonardis asked Mr. Penyak if he is agreeable to no temporary structures on site... huts, tents, pop-ups etc..... No maintenance of vehicles and no storage of materials onsite. Time frame. Vice Chairman Gustafson suggested to run with ownership. Chairman Leonardis suggested a time frame. Mr. Levinson stated that has not been discussed with the Applicant. Has some concerns with the suggestion. The approval would be based on today. Things can change in the surrounding areas that they do not have control of. Would be concerned that the Applicant would lose his approval based on the surrounding area. If he is not living up to his obligation, that is a separate issue... can get a Notice of Violation. Chairman Leonardis asked if that is why Mr. Penyak is before the Board. Per Mr. Penyak, yes. Has other commercial properties. Has been using it for ten (10) years. Mr. Levinson stated that the Applicant had certain believes but was wrong. Mrs. Cullen asked if she is understanding the situation correctly... that the Applicant can use the property as a construction storage yard without coming to the Board. Mr. Levinson stated correct. Thought he did not have an issue. Mr. Penyak stated did go before the Board for his office and yard for his business. Thought if he was not running a business from the site, just parking trucks, it was allowable. Did not know.

Mrs. Wasnick reiterated that Mr. Penyak had been using the property for ten (10) years the same way and had no issues. Mr. Penyak stated yes.

Mrs. Campagna stated that Mr. Penyak advised that there are two (2) or three (3) employees that go to the site. Mr. Penyak stated his business is on Kennedy Road. If he keeps something there or need to get something one (1) or two (2) employees will go and get it. Mrs. Campagna reiterated that the employees do not go there every day. Per Mr. Penyak, no. Mrs. Campagna asked how many of his vehicles are parked at the site. Mr. Penyak stated that at this moment, none. Mrs. Campagna asked how often does he park his vehicles on the site. Mr. Penyak stated he hasn't parked any of his vehicles on the site since receiving the Violation. Mrs. Campagna asked how many of his vehicles were parked prior to the Violation. Mr. Penyak stated one (1) to two (2) trucks and a trailer. The employee would enter the lot with his vehicle and park his vehicle. Takes one (1) of the trucks and returns at the end of day. Mrs. Campagna asked regarding the tenant. How many trucks? Mr. Penyak stated currently renting to a landscaper in town who has one (1) to two (2) trucks and a trailer. They do the same.

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Mr. Lemos asked if there is someplace on site for trash. Mr. Penyak stated there is no trash on site. Mr. Lemos asked regarding trash of the tenant. Mr. Levinson if they dispose of trash on site that would be a violation of the lease.

Mr. Bucco stated revised plans would be submitted for condition on approval. Those items are to be indicated on the plans before the plans are signed by himself, Chairman and Board Secretary.

Chairman Leonardis asked if there are any improvements needed to the fence. Mrs. Cullen stated from her site visit, the fence is not in disrepair.

Mr. Slachetka stated that many items in his review letter are similar to Mr. Bucco's which most have been addressed. Mr. Slachetka asked if the Board will be hearing any positive or negative criteria regarding the Use Variance. Mr. Dec stated he can as an Engineer but not as a Planner. Mr. Slachetka stated that would need to be discussed.

Mr. Slachetka reviewed his review letter.

Mr. Slachetka asked if the site plan can be amended to show on the plans the demarcation of trucks and trailers. Mr. Dec stated he can do so. Mr. Slachetka asked if there are boxed trucks with items being stored. Mr. Penyak stated there are no box trucks. Mr. Slachetka asked in the trailers. Mr. Penyak stated no. Mr. Bucco questioned lawnmowers and equipment. Mr. Penyak stated yes. Mr. Slachetka asked if gas cans are stored in the trailers. Mr. Penyak stated no. Chairman Leonardis asked where does the landscaper keep the gas. Mr. Penyak stated that the landscaper has open trailers. Does not keep all his equipment at the site. Mr. Wiley asked if Mr. Penyak would accept as a condition that no gas tank storage on site. Mr. Penyak stated yes.

Mr. Slachetka and Mr. Bucco review the waivers. Both agree that they are acceptable.

Mr. Slachetka stated that testimony is needed for the use variance.

Chairman Leonardis agreed.

Several Board Members stated they would like testimony from a Professional Planner.

Chairman Leonardis stated that there have been many items requested on the drawings.... notes, landscaping, lighting etc. This is a lot with equipment. Not proposing security. Two (2) businesses using the lot. Wants to make sure it is an established lot. It is a business. Mr. Levinson stated would add to lease any provisions that the Board recommends to assure to the best of their ability that the tenant abide by the terms approved by the Board. Mr. Wiley stated that it would useful to outline the conditions that are acceptable by the Applicant to present to the Board in the next hearing.

Chairman Leonardis stated no disrespect to the person who did the drawings, but the drawings do not show the gate and landscaping. Mr. Dec stated that was the intent. The Applicant is not looking to do anything to the site. Chairman Leonardis stated the site is being used for a business even though there are no structures on the site.

Chairman Leonardis opened the discussion to the Public.

Dennis Hado - 200 Amboy Avenue, South Plainfield, New Jersey - is sworn in. Has business on Dover Place. None of the businesses on Pulaski Street have onsite parking. One Call Electric, Florence Construction, Mr. Penyak and Mr. George have no onsite parking. Garbage does have onsite parking. Cannot get his trucks down the street. Landscapers usually have three (3) to four (4) people in the truck. Parking in the street. Street is clogged, worries a Fire Truck cannot make it down the street. Has difficulty making the right from Dover onto Pulaski Street. Zoning told him it is a Police problem. Police told him it is a Zoning problem. He has had to knock on doors to ask people to move vehicles. The

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Board has the opportunity to correct some of the problem. People would come to the site and the gate is locked. They park in the street and wait for the gate to open then walk into the yard. Spoke with the landscaper, asked if he can park all his employee's vehicles in the yard... Which they have been. Is concerned that if Mr. Penyak gets the approval and leaves, there is no way to enforce the issue. Cannot make an agreement with everyone on the street regarding parking. Allows people to park in his parking lot. Has asked people not to park at the corner. Has spoken to Traffic Safety. The site plan does not show curb cut. There are 2'X4' on the street. Agreed with Board regarding landscaping. Everyone to follow the rules. Landscaper throws lunch back into the truck. Does not believe they take the garbage home. Needs to be addressed. Believes the number of vehicles is excessive. There should not be multiple tenants. One person be accountable.

Mr. Penyak agreed that there are a lot of vehicles parked in the street. However, it is not his tenant or his employees doing so. Does not believe it applies to him. For the last ten (10) years, there has not been one (1) complaint.

Chairman Leonardis stated if there is landscaping in the front will eliminate parked cars. Need a curb cut if there is not one. There needs to be some organization and be business friendly.

Mr. Bucco stated that he did advise the Applicant regarding the curbs.

Chairman Leonardis announced that the next hearing will be tentatively scheduled for February 4, 2020 pending the adoption of the 2020 calendar at the re-organization meeting of the Board.

The Board discussed the scheduling of the Zoning Board of Adjustment re-organization.

Chairman Leonardis announced that the Zoning Board of Adjustment re-organization meeting will be held on January 7, 2020 at 6:30 pm.

INFORMAL HEARINGS: None

OLD BUSINESS: None

NEW BUSINESS: None

CORRESPONDANCE: None

EXECUTIVE SESSION: None

ADJOURNMENT: 8:15 PM

Respectfully Submitted,
Joanne Broderick
Recording Secretary